

ORIGINAL

Bell Atlantic
1300 I Street, NW
Suite 400 West
Washington, DC 20005

Patricia E. Koch
Assistant Vice President
Federal Regulatory
(202) 336-7823
(202) 336-7866 (Fax)

EX PARTE OR LATE FILED



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May 15, 2000

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

RE: Application of GTE Corporation and Bell Atlantic Corporation For Consent to Transfer Control of Certain Licenses and Authorizations, CC Docket No. 98-184

Dear Ms. Salas:

This letter is to provide notice of a joint ex parte meeting that took place May 15th in the above-referenced matter. Steven Bradbury for GTE, Michael E. Glover for Bell Atlantic, and Peter Keisler and Joan Marsh for AT&T met with Commissioner Gloria Tristani and Sarah Whitesell of her office. The purpose of the meeting was to discuss the respective parties' positions relating to the DataCo proposal.

Please call me if you have any questions.

Very truly yours,

A handwritten signature in cursive script, appearing to read 'Patricia E. Koch'.

Enclosures

cc: Commissioner Tristani
Ms. J. Mikes
Ms. Whitesell
Mr. P. Keisler
Ms. J. Marsh

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Authorities Establish That Options And Other Conversion Rights Are Not “Equity Interests” And Do Not Constitute Ownership

- Options and conversion rights are not “equity interests”:

“Many cases hold that *an option contract does not qualify as an equity interest.*” *Powers v. British Vita, P.L.C.*, 969 F. Supp. 4, 5 (S.D.N.Y. 1997) (emphasis added).

“USAir has *no present equity interest* in Shuttle, but it has *an option* to purchase a controlling interest in the company effective October 10, 1996.” *Association of Flight Attendants v. USAir Inc.*, 24 F.3d 1432, 1435 (D.C. Cir. 1994) (emphasis added).

“A *debenture* is a credit instrument which *does not devolve upon its holder an equity interest* in the issuing corporation Similarly, the convertibility feature of the debenture does not impart an equity element until conversion occurs.” *Simons v. Cogan*, 549 A.2d 300, 303-04 (Del. 1998) (emphasis added).

- Options do not constitute ownership:

“An option to purchase stock does not vest in the prospective purchaser *an equitable title to, or any interest or right, in the stock.*” *Ball v. Overton Square, Inc.*, 731 S.W.2d 536, 540 (Tenn. Ct. App. 1987) (emphasis added).

“An option to purchase stock does not vest in the prospective purchaser *an equitable title to, or any interest or right in, the stock.*” 12A Fletcher Cyclopedia of Private Corp. § 5575 (1993) (emphasis added).

**The Department Of Justice, Judge Greene And AT&T Concluded That
Under The MFJ, Options And Other Conversion Interests Are Not “Equity
Interests” Or Ownership**

- The Department of Justice:

“During the interim period [while NYNEX held the option], *NYNEX would not have any kind of equity interest* in Tel-Optik.” Report of the United States to the Court Concerning Proposed Purchase by NYNEX Corp. of Conditional Interest in Tel-Optik, Ltd., at 10, *United States v. Western Elec. Co.*, No. 82-0192 (D.D.C. filed June 20, 1986) (emphasis added).

“The conditional interest to be secured by NYNEX *does not constitute an ‘equity interest’* as that term is normally used.” *Id.*, at 12 (emphasis added).

“NYNEX Will *Not Acquire an Equity Interest* in Tel-Optik As a Result of the First Step of the Proposed Transaction.” *Id.*, at 12 (emphasis added).

- Judge Greene:

“In order to avoid unnecessary delay and undue interference with business decisions, the approval of the Court shall not be required [when a Bell company initially acquires an option]. However, as discussed below, the actual acquisition by a Regional Holding Company of an equity interest in an entity engaged in activities prohibited by the decree may not occur without a waiver granted by the Court” Memorandum at 6, *United States v. Western Elec. Co.*, No. 82-0192 (D.D.C. Aug. 7, 1986).

- AT&T:

“For example, what if an RHC secretly paid a billion dollars for a long-term transferrable option to purchase 100% of a major manufacturer at a nominal price. * * * The RHC could then sell the option and profit from the manufacturing business, without ever seeking a waiver. * * * [T]he very conduct the Decree sought to end would occur for years, ***without an RHC ever owning an actual equity interest*** in the manufacturer” Brief of AT&T, *United States v. Western Elec. Co.*, No. 86-5641, at 14-15 (D.C. Cir. filed June 26, 1989) (emphasis added).

“LACTC has two partners: (1) LIN Cellular Communications Corporation, a California corporation (‘LIN Cellular’), in which ***McCaw holds a 52% equity interest and an option to acquire the remaining equity***, effective in January 1995” Affidavit of Professor John C. Coffee, Jr., at 9, *United States v. Western Elec. Co.*, No. 82-0192 (D.D.C. filed May 24, 1994) (emphasis added).

LIN was “52%-owned” by McCaw. AT&T’s motion for a Waiver of Section I(D), at 8, *United States v. Western Elec. Co.*, No. 82-0192 (D.D.C. filed June 7, 1994).

“QUESTION [from the D.C. Circuit Bench]: Some of those options were not [prohibited] under the original decree.

MR. CARPENTER: Some of those options would violate section 2 [of the MFJ] and some wouldn’t.” Oral Argument Tr. at 25, *United States v. Western Elec. Co.*, Nos. 86-5641 & 86-5642 (D.C. Cir., Oct. 24, 1989).

Under Commission Precedents Options And Other Conversion Rights Are Not Cognizable Ownership Interests

- The former cable/telco cross-ownership rules

“Interests with rights of conversion to equity, including debt instruments, warrants, convertible debentures, and options, shall not be included in the determination of cognizable ownership interests unless and until conversion is effected.” 47 C.F.R. § 63.54(e)(5); *Telephone Company-Cable Television Cross-Ownership Rules*, 10 FCC Rcd 244 (1994).

- Section 310’s foreign-ownership ban

“[A]n option held by a foreigner to buy stock in a licensee or the parent of a licensee is not cognizable until it is exercised.” DCR PCS, Inc., Order, DA 96-1816, ¶ 24 (Wireless Bureau Nov. 4, 1996).

- LEC/LMDS cross-ownership rules

“Debt and interests such as warrants and convertible debentures, options, or other interests (except non-voting stock) with rights of conversion to voting interests shall not constitute attributable interests unless and until conversion is effected.” Local Multipoint Distribution Service and Fixed Satellite Services, 12 FCC Rcd 12545 (1997) (adopting 47 C.F.R. § 101.1003(e)(5)).

- CMRS spectrum cap rules:

“Debt and instruments such as warrants, convertible debentures, options, or other interests (except non-voting stock) with rights of conversion to voting interests shall not be attributed unless and until conversion is effected.” 47 C.F.R. § 20.6(d)(5).